

Application No. 10/662,223

REMARKS

This is a Response to the Office Action dated March 21, 2006. Claims 1, 2, 4-7, and 25-32 are pending in this application. The Examiner has rejected Claims 1, 2, 4-7, and 25-32.

Claims 1, 27, 31, and 32 are amended. The amendments change the claims to a form substantially similar to that in the Response filed on January 4, 2005. Therefore, since the Examiner has already performed a search on the claims in the previous response, the presently amended claims do not require a new search by the Examiner.

Claim Rejections - 35 U.S.C. § 103

Claims 1, 2, 4-7, 25, and 26 have been rejected under 35 U.S.C. § 103 as being unpatentable over Jendersee et al. (U.S. Patent Number 5,836,965) in view of Hart et al. (U.S. Patent No. 6,183,503), in view of Helfrich (U.S. Patent No. 5,308,338), and Scanlon et al. (U.S. Patent No. 2,845,346). Applicant respectfully disagrees.

Jendersee et al. teaches intimate contact between the balloon and stent at the proximal and distal ends and along the entire length of the stent. (col. 3, lines 23-30 of Jendersee et al.) It also teaches that the “segments or segments 10” of the stent is compressed upon the outside of the balloon 36 . . . as best shown in FIGS. 2 and 4.” (col. 6, lines 43-45 of Jendersee et al.) Both FIG. 2 and FIG. 4 show the stent contacting the balloon along the entire length. Additionally, the “the balloon 36 and the stent segments 10 are in intimate contact.” (col. 7, line 8 of Jendersee et al.) Also, Jendersee et al. teaches encapsulation of the stent, which means that the inventive method provides a “balloon in intimate contact with . . . a stent to assure stent attachment to the balloon.” (col. 3, lines 20-40 of Jendersee et al.) Jendersee et al. also teaches that “[a]dherence is required for encapsulation which includes both intimate contact between the stent and the balloon as well as contact where the balloon surrounds at least a portion of the stent.” (col. 7, lines 12-14 of Jendersee et al.)

Therefore, Jendersee et al. is not combinable with any reference that teaches no contact between the support and the stent. Therefore, Hart et al.’s teaching of an element lacking contact with the median portion of the stent is contrary to the teachings of Frisch, i.e., one teaches contact, the other teaches no contact. Therefore, Jendersee et al. is not combinable with Hart for this same reason Hart and Jendersee teach away from each other. MPEP 2145 states that “it is improper to combine references where the references teach away from their combination.”

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Moreover, claim 1 recites the limitation “pores have an open end and a closed end so as to provide a closed pore system.“ The definition of a closed pore system is a system in which the “pores are isolated from each other” (Specification, as filed, paragraph [0028]). Scanlon et al. teach an open-pore system because its pores interconnect (col. 1, line 16; and col. 2, line 53 in Scanlon et al.). Helfrich and Hart et al. do not cure the deficiency of Jendersee et al. with respect to the “closed pore system” in claim 1. Therefore, claim 1 is patentably allowable over Jendersee et al. in view of Helfrich, Hart et al., and Scanlon et al. Claims 2, 4-7, 25, and 26 depend from Claim 1 and are allowable for at least the same reason that claim 1 is allowable. Applicant respectfully requests removal of the rejections of claims 1, 2, 4-7, 25, and 26.

Furthermore, the Examiner assumes that the porous material at col. 4, lines 31-39 of Helfrich are “capable of receiving a coating substance,” as recited by claim 1, without any evidence of this. The Examiner appears to be taking official notice of facts without documentary evidence to support an Examiner’s conclusion. MPEP Section 2143.03. The Examiner is asked to supply evidence supporting Examiner’s conclusion. Hart et al. and Scanlon et al. do not cure the deficiency of Jendersee et al. with respect to the above-mentioned limitation in claim 1. Therefore, absent the requested evidence, claim 1 is patentably allowable over Jendersee et al. in view of Helfrich, Hart et al., and Scanlon et al. Claims 2, 4-7, 25, and 26 depend from Claim 1 and are allowable for at least the same reason that claim 1 is allowable. Applicant respectfully requests removal of the rejections of claims 1, 2, 4-7, 25, and 26.

Furthermore, Scanlon et al. mporous metal at 2300 Fahrenheit. That ought to warrant some discussion of nonanalogous art.

Claim Rejections - 35 U.S.C. § 103

Claims 27-32 have been rejected under 35 U.S.C. § 103 as being unpatentable over Jendersee et al. in view of Hart et al. and Helfrich. Applicant respectfully disagrees.

As indicated above, Hart et al. is not combinable with Jendersee et al.

Furthermore, the Examiner assumes that the porous material at col. 4, lines 31-39 of Helfrich can absorb a coating composition that comes into contact with the material, as recited in claim 27, and at least partially absorbs some of the composition that comes into contact with the material, as recited by claims 31 and 32.

The Examiner appears to be taking official notice of facts without documentary evidence to support an Examiner's conclusion. MPEP Section 2143.03. The Examiner is asked to supply evidence supporting Examiner's conclusion. Hart et al. do not cure the deficiency of Jendersee et al. with respect to the above-mentioned limitations in claims 27, 31, and 32. Therefore, absent the requested evidence, claims 27, 31, and 32 are patentably allowable over Jendersee et al. in view of Helfrich and Hart et al. Claims 28, 29, and 30 depend from Claim 27 and are allowable for at least the same reason that claim 27 is allowable. Applicant respectfully requests removal of the rejections of claims 27-32.

Claim Rejections - 35 U.S.C. § 103

Claims 1, 2, 4-6, and 25-32 have been rejected under 35 U.S.C. § 103 as being unpatentable over Frisch (U.S. Patent No. 4,906,423) in view of Hart et al. Applicant respectfully disagrees.

The Examiner states "Frisch teaches a support mandrel for manufacturing a prosthetic device or stent comprising a shaped member configured to support a stent, the member having a plurality of pores disposed on a surface thereof wherein the pores are capable of receiving a coating substance during a coating process wherein the pores can include open to closed cells (col. 3, lines 60-62)." Frisch teaches a foam mold for manufacturing a stent by coating the porous mold with a material. (col. 2, lines 32-40). Frisch states at col. 3, lines 60-62: "various foamed materials may be used for the present invention. The foams may have various ratios of

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open to closed cells." Therefore, the Examiner appears to be equating the foam mold with the limitation "apparatus to support" recited in claims 1, "mounting assembly" in claim 27, and "support assembly" in claims 31 and 32.

After the material is coated on the porous mold, the mold is dissolved away, leaving the prosthesis. (col. 2, lines 37-42 of Frisch) Therefore, Frisch fails to teach that its pores are "capable of receiving a coating substance during the coating process," as recited in claim 1, because in Frisch there is no stent until after the coating process is completed. For the same reason, Frisch fails to teach the limitation of claim 27 "a layer to absorb a coating composition that comes into contact with the layer during the application process," the limitation of claim 31 "a layer to absorb a coating composition that comes into contact with the layer during the application process," and the limitation of claim 32 "an absorbent material for at least partially absorbing some of the composition that comes into contact with the member."

Hart et al. does not cure the above-noted deficiency of Frisch et al. Therefore, claims 1, 27, 31, and 32 are patentably allowable over Frisch in view of Hart et al.

Also, the combination with Hart is improper. As stated above, Frisch teaches a mold, which by definition must intimately contact the item the mold is forming. Therefore, Hart et al.'s teaching of an element lacking contact with the median portion of the stent is contrary to the teachings of Frisch, i.e., one teaches contact the other teaches no contact. Thus, Frisch and Hart et al. teach away from each other. MPEP 2145 states that "it is improper to combine references where the references teach away from their combination."

Moreover, Hart et al.'s teaching of a "dumbbell" shaped element would be non-functional if incorporated into the mold of Frisch because to properly mold, the mold must contact the object it is forming. MPEP 2145 further states "proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference."

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CONCLUSION

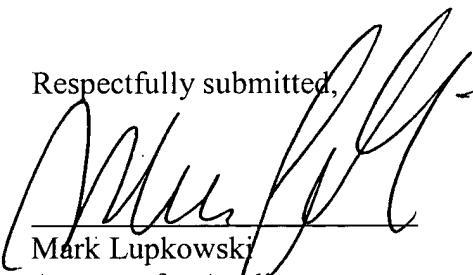
Claims 1, 2, 4-7 and 25-32 are pending in this application. Examination and allowance of the claims are respectfully requested.

If the Examiner has any questions or needs any additional information, the Examiner is invited to telephone the undersigned attorney at (415) 954-0345.

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Respectfully submitted,



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